IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 758 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LUCKY STEEL INDUSTRIES

Versus

STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 758 of 1987
MR PC KAVINA for Petitioner
MR SUDHIR MEHTA, AGP for Respondents No. 1-5

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.A.PUJ

Date of decision: 07/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The petitioner firm seeks a declaration that it is entitled to get the sales tax incentive benefits as per the resolution dated 27th August 1980, at Annexure `A' to the petition, and a direction on the respondents to grant the incentive benefits forthwith to the petitioner. The petitioner also seeks a declaration that the impugned resolution dated 15th January 1987, at Annexure `H' to the petition, is unconstitutional to the extent that it gives effect to the resolution from 15th January 1985, and a direction is sought that the impugned resolution dated 15th January 1987 should be made applicable with effect from 18th March 1982.

2. The grievance of the petitioner is that the respondents have not granted the benefit of deferment of sales tax incentive though promised under the resolution dated 27th August 1980. According to the petitioner, it set up an industry in the backward area of Vartej, relying on the promises held out by the respondent government under various resolutions offering package benefits like cash subsidy, sales tax exemption and sales tax deferment with a view to attract new entrepreneurs for setting up new projects in the notified backward areas. According to the petitioner, it had acted upon such promises and altered its position with a hope and temptation to get the package incentive benefits. The petitioner has invoked doctrine of promissory estoppel against denial of the benefits to the petitioner.

2.1 It is stated that, relying upon the promises held out by the respondents government in their resolution dated 27th August 1980, the partners of the petitioner firm entered into a partnership agreement and formed a partnership with effect from 30th March 1984. Thereafter, the firm obtained a plot of land on rent and started constructing a building thereon. An application was made to the respondent No.4 for getting the petitioner provisionally registered and a provisional registration was granted by the respondent No.4 on 15th December 1983. The petitioner was granted a licence to set up a factory for manufacturing mild steel round bars and CTD bars. It spent a total sum of Rs.15,24,490=00 on the building, plant and machinery and in about 10 months' time, it commenced commercial production with effect from 21-9-1984. Later on, a new partnership deed was executed with changes in the firm with effect from 4th May 1985. On the basis of the resolution, at Annexure `A' to the petition, dated 27th August 1980, the petitioner approached the respondent No.4 with an application to

issue eligibility certificate to the petitioner for getting the benefit of deferment of sales tax dues. The respondent No.4, however, by the communication dated 6th February 1985, rejected that application on the ground that the petitioner was not entitled to get the benefit of deferment of sales tax dues since it's industry was covered in the list of industries not eligible to get the benefits under the scheme. According to the petitioner, they approached the respondent No.4 personally to convince him that the petitioner was not a re-rolling mill of steel and steel scrap, but it was a rolling mill manufacturing its products from steel scrap. Since the respondent No.4 did not favourably respond, the present petition was filed on 27th February 1987.

2.2 It is also the case of the petitioner that, in consonance with the resolution of 27th August 1980, the government issued the resolution dated 18th March 1982, at Annexure `C' to the petition, under which the petitioner was entitled to get the benefit of deferment of sales tax. According to the petitioner, the District of Bhavnagar was declared as a growth centre for the purpose of various benefits, including the benefit of deferment of sales tax and Vartej was 12 to 15 KMs from Bhavnagar city. The Port of Alang, near Bhavnagar, was declared to be a Port for ship breaking purposes and foreign vessels are imported for breaking. At that port, scrap received from the breaking of ship is rolled out at various rolling / re-rolling mills, which results in saving huge amounts of foreign exchange that would otherwise have been spent on importing steel to meet the shortfall of steel products in the country. Since the steel scrap was available at Alang, many rolling mills were established at Vartej so that they can get the incentive benefits offered by the State Government. It is stated that, prior to 2nd July 1983, rolling / re-rolling mills were not permitted to be registered as Small Scale Industries by the Central Government. The Development Commissioner, Small Scale Industries, Government of India, however, by letter dated 2nd July 1983 issued necessary instructions to all the States to consider the rolling / re-rolling mills to be eligible for being enrolled under small scale industries in backward areas of the State. Thereafter, the Government started enrolling such rolling mills as small scale industries. The petitioner in this background started to set up a rolling mill industry for manufacture of mild steel round bars and CTD. bars from steel scrap at Vartej.

3. When the resolution dated 27th August 1980

announcing policy of incentive was issued by the Government, rolling or re-rolling mills were not enumerated in the list of industries not eligible to get the benefits. However, by a subsequent resolution dated 7/12th January 1982, the list of ineligible industries came to be amended, as per which, `re-rolling of steel including stainless steel' was added at item 24 of the list. The case of the petitioner is that it was running a rolling mill manufacturing products from steel scrap only and did not fall in entry 24 which referred to re-rolling mill, and not a rolling mill. In the alternative, the petitioner's case is that, since the petitioner was rolling or re-rolling only steel scrap and not `steel' or `stainless steel', it's industry was outside the purview of entry 24 of the ineligibility list. It is pointed out that whenever steel scrap is to be included, it is specifically mentioned, as was done in entry 21 `re-rolling of steel and steel scraps including stainless steel' of the list of ineligible industries annexed to the resolution of 19th August 1983 under which capital investment subsidy scheme was declared. Thus, according to the petitioner, it's industry was not included in the list of industries which were not eligible to get the sales tax incentive benefits.

3.1 According to the petitioner, by the resolution of 15th January 1987, at Annexure `H' to the petition, the industry of `re-rolling of steel including stainless steel' alongwith four other industries were deleted from the list of ineligible industries and those of them which had commenced their commercial production on or after 15th January 1985 were given the benefit of the deferment of sales tax dues. According to the petitioner, since it had commenced production prior to 15th January 1985, the benefit was denied to the petitioner and this amounted to a hostile discrimination against the petitioner based on unreasonable and arbitrary classification for the purpose of giving benefits. According to the petitioner, the resolution at Annexure `H' dated 15-1-1987 does not give any reason or background or object for prescribing cut-off date of 15-1-1985 and the classification between the industries that had commenced production prior to 15-1-1985 and those that were established after 15-1-1985 was not founded on any intelligible differentia. The said resolution is, therefore, challenged to the extent that it fixed 15th January 1985 as the cut-off date.

4. The respondents have not filed any affidavit in reply and have relied upon the material which is already on record.

5. The learned counsel appearing for the petitioner has contended before us that the resolution dated 27th August 1980 held out promises to the entrepreneurs at large to establish new industrial projects in the areas notified and since the petitioner firm established its new industry, it had altered its position to its disadvantage. The industry of the petitioner of rolling steel scrap was not included in the list of ineligible industries till 12th January 1982 and there was no justification forthcoming from the side of the Government to show as to for what reason the said industry was included in the list of ineligible industries. According to the learned counsel, the action of including the industry of re-rolling steel including stainless steel in the list of ineligible industries by the resolution dated 12th January 1982, was arbitrary. It was submitted that a pre-existing benefit can be withdrawn and then restored only if the Government pleads and proves public interest to justify such action. It was submitted that, during the currency of the period of the resolution dated 27th August 1980, the entrepreneurs were lured to establish new industrial projects and the formation of the industry, though occurring at a subsequent point of time, would have its genesis in the offer made under the resolution dated 27th August 1980. The learned counsel referred to the averments made in the petition to show that the petitioner had set up the new industrial project in view of the promises held out by the Government under the said resolution and submitted that since the facts were not controverted by filing any affidavit in reply, there was no reason to doubt the correctness of the averments made in the petition. The learned counsel further argued that the cut-off date of 15th January 1985 fixed under the resolution at Annexure `H' to the petition, had no nexus to the object of rapid industrialization which was sought to be achieved and the fixing of the said date amounted to punishing the efficient industrial management which resulted into quicker production and to reward the tardy and inefficient entrepreneurs who took longer time in commencing their commercial production and yet reaped the benefit of resolution of 15th January 1987. The counsel contended that, in the matter of manufacture of the articles by rolling or re-rolling process, those who will commence production prior to 15th January 1985 and others who have done so after that date, constituted a single class and were equals who were by virtue of specifying the cut-off date of 15th January 1985 being treated unequally. The cut-off date was, therefore, arbitrary and violative of Article 14 of the Constitution. According to him, there was no rationale in fixing

15-1-1985 as the date when production should have commenced. He submitted that the petitioner should not be penalized for being more efficient in commencing the production before others who could commence only after 15th January 1985. It was then argued that the petitioner's industry did not fall in entry 24 of the list of ineligible industries published under the resolution dated 12th January 1982 or similar entry occurring in context of the resolution dated 18th March 1982 by virtue of the list of ineligible industries contained in Table 1 of that resolution, as amended by the resolution dated 15th September 1982 which added more industries to that Table, including `re-rolling of steel including stainless steel' appearing at entry 10 of paragraph 2 of the resolution dated 15th September 1982. This he argued on the basis that the petitioner was not a rolling mill but was a re-rolling mill. Further, that there was no mention of `steel scrap' either in entry 24 of the list of ineligible industries contained in the resolution dated 12-1-1982 or even in entry 10 of the resolution dated 15th September 1982, by which the list of ineligible industries contained in the Table under the resolution dated 18th March 1982, was enlarged.

5.1 In support of his contentions, the learned counsel relied upon the following decisions :

[a] The decision of a Division Bench of this Court in M/s Kothari Oil Products Co. v. State of Gujarat, reported in XXIII (1) GLR 20 was cited for the proposition that, if the Government or any authority on behalf of the Government has made a representation and acting on that representation a party has altered its situation, then, it is not open to the Government to resile from that position and at the instance of the party who has altered its situation to its disadvantage, the Court is entitled to direct the Government or the authority to carry out its promises or its scheme. This decision was rendered in context of the benefits of the scheme announced under the notification dated 22nd December 1977. It was held that since the petitioner had shown that they had spent nearly Rs. 43 lakhs in the setting up of the cotton delinting plant after February 1978 relying on the scheme set out in the two notification of December 22, 1977, it was not permissible to the State authorities to back out of the schemes and to say that the petitioners will not be entitled to the benefits thereof. It was held that the

resolution dated 26th September 1979, in so far as it purports to take away the benefits of interest free sales tax loan from the petitioners, was not applicable in their case.

[b] The decision of the Supreme Court in commissioner of Income Tax v. M/s Krishna Copper Steel Rolling Mills, reported in AIR 1992 SC 422 was cited for the proposition that the question whether the article produced is the raw material or an article made of iron and steel has to be decided on the basis of the nature of the article and not the kind of mill which turns it out. It was held that if machinery and plant installed in steel mills where the process includes not merely the production of ingots, billets and the like but also the production of bars and rods are eligible for the higher development rebate, it cannot be said the same plant and machinery, when installed in rolling mills which proceed, from the stage of ingots or billets, to manufacture bars and rods, cannot be said to be not eligible for higher rate of development rebate. What is to be examined is not the nature of the mill which yields the article but the nature of the article or thing that is manufactured and to ask the question whether such article or thing can be considered as raw material for manufacture of other article made of the metal or is it itself an article made of the metal. It was held that the mild steel rods, bars or rounds which are manufactured by the assesses are only finished forms of the metal and not articles made of iron and steel, and that they only constitute raw material for putting up articles of iron and steel such as grills or windows by applying to them processes such as cutting or turning. The rod or the wire rods are likewise not products of iron and steel but only certain finished or refined forms of the metal itself. It was noted that pig iron and iron scrap are fed into furnaces to produce ingots, billets and blooms. But both are iron and steel in different form, the letter being referred to as `semi-finished steel'. Likewise, the bars, rods, rounds, wire rods and the like constitute the second stage in which one gets only `finished' forms of iron and steel.

[c] The decision of the Supreme Court in State of Madhya Bharat (now the State of Madhya Pradesh)

v. Hiralal Ji, reported in AIR 1966 SC 1546 was cited to point out that the Supreme Court held that the bars, flats and plates sold by the assessee were iron and steel exempted under the Notification issued under section 5 of the Madhya Bharat Sales Tax Act, which exempted iron and steel from sales tax. The question that arose before the Supreme Court was whether iron bars, flats and plates converted from scrap iron by re-rolling fell under the exemption or whether they could be taxed as goods prepared from any metal other than gold. The Supreme Court held that, so long as iron and steel continued to be raw materials, they enjoyed the exemption. Scrap iron purchased by respondent was merely re-rolled into bars, flats and plates. The raw material was only re-rolled to give it attractive and acceptable form. Such raw material did not in the process lose their character as iron and steel and the dealer sold `iron and steel' in the shape of bars, flats and plates and the customer purchased `iron and steel' in that shape. The Court, therefore, upheld the conclusion reached by the High Court that the iron and steel was exempted under the Notification.

[d] The decision of the Supreme Court in M/s Devi Das Gopal v. State of Punjab, reported in AIR 1967 SC 1895 was cited for the proposition that it is a duty of the Court to strike down without any hesitation any arbitrary power conferred upon the executive by the legislation.

[e] The decision of the Supreme Court in Shri Digvijay Cement Co. v. State of Rajasthan, reported in AIR 1997 SC 2609 was cited to point out that the notifications issued by the State of Rajasthan reducing the rate of tax on inter-State sale of cement and making differentiation between the rate of tax of the intra-State sales and inter-State sales of cement, had the effect of creating a preference for cement manufactured and sold in Rajasthan and disadvantage for the sale of cement manufactured and sold in other State i.e. Gujarat, and thus, had the direct and immediate adverse effect on the free flow of trade and were, therefore, void being contrary to the scheme of the constitutional provisions contained in Chapter XIII of the Constitution.

[f] The decision of the Supreme Court in State of

Bihar v. M/s Suprabhat Steel Ltd., reported in AIR 1999 SC 303 was cited to point out that, in a case where the State Government had introduced the new industrial policy dealing with the facility of sales tax exemption on purchase of raw materials, it was held that in view of the clear and unambiguous language of sub-clause (b) of clause 10.4 of the policy which provided that the old industrial units whose investment on plant and machinery did not exceed Rs.15 crores on 1-4-1993 would be entitled to the said facility of sales tax exemption on the purchase of raw material for a period of seven years from 1-4-1993, it could not be accepted that even said sub-clause (b) would be applicable only to those industrial units which would come into production from 1-4-1993 to 31-3-1998.

[g] Reliance on decision of the Supreme Court in Commissioner of Sales Tax v. Industrial Coal Enterprises, reported in AIR 1999 SC 1324 was placed for the proposition that the provisions of exemption clause should not be, so strictly construed, as would defeat the very purpose and object of grant of exemption. It was observed by the Supreme Court that the object of granting exemption from payment of sales tax has always been for encouraging capital investment and establishment of industrial units for the purpose of increasing production of goods and promoting the development of industry in the State. The industrial unit fulfilled the relevant conditions at the time when it applied for exemption as its capital investment did not exceed Rs.3 lakhs. It was observed that neither the section nor the notification contained any condition that if the capital investment of the unit exceeds Rs.3 lakhs after the grant of exemption, such exemption would cease to operate. The respondent had shifted the unit to its own premises which made it much more convenient and easy for it to carry on the production, and the bonafides of the respondent had never been questioned.

[h] The decision of the Supreme Court in State of Rajasthan v. M/s Mahaveer Oil Industries, reported in AIR 1999 SC 2302 on which heavy reliance was placed on behalf of the petitioner was referred in context of Notifications issued by the State of Rajasthan withdrawing the benefit of incentive scheme from oil extracting and

manufacturing industries on 7-5-1990 and then restoring the benefit of exemption from central sales tax on 26-7-1991, as a result of which the new industrial units established after 7-5-1990 and before 26-7-1991 alone were not entitled to the benefits of the incentive scheme of the Central Sales Tax Act in respect of inter-State sale of their goods. Of the two, notification dated 7th May 1990, one was issued under the Rajasthan Sales Tax Act, 1954 and the other under the Central Sales Tax, and they amended notification dated 23rd May 1987 by which incentive scheme was notified, and as a result of such amendment, oil extracting or manufacturing industry was added in the list of ineligible industries, thus withdrawing the benefits of incentive scheme from oil extracting and manufacturing industries both in respect of Rajasthan Sales Tax, as also the Central Sales Tax. The Supreme Court noted that the notification of 7-5-1990 issued by the Central Sales Tax Act withdrawing the benefit of the scheme from oil extraction and manufacturing industries in respect of inter-State sales effected by them was already quashed by the Supreme Court by its judgement dated 23rd February 1995 in State of Rajasthan and another v. Gopal Oil Mills (Civil Appeal No. 5738 of 1994) and in view thereof since the respondent had started commercial production on 17th February 1991, during the subsistence of the said scheme, they were entitled to the benefit of the said scheme pertaining to exemption from Central Sales Tax from the date of starting of commercial production. It was contended before the Supreme Court that the judgement in Gopal Oil Mills (supra) should not be applied to them in so far as it upheld the validity of notification of 7-5-1990 withdrawing the benefit of incentive scheme under the Central Sales Tax Act, and that the Court did not consider the validity or otherwise of the notification of 7-5-1990 issued under the Rajasthan Sales Tax Act, on merits. In context of the notification of 7-5-1990 under the Rajasthan Sales Tax Act, no subsequent notification had been issued to restore the benefit of the scheme to oil extraction industries. It was therefore held that the ratio in Gopal Mills's case on the basis of which the notification of 7-5-1990 under the Central Sales Tax Act was set aside, was was not available

while considering the notification of 7-5-1990 under the Rajasthan Sales Tax Act. After reviewing the precedents on the issue, the Supreme Court held that : "Public interest requires that the State be held bound by the promise held out by it in such a situation. But this does not preclude the State from withdrawing the benefit prospectively even during the period of the scheme, if public interest so requires. Even in a case where a party has acted on the promise, if there is any supervening public interest which requires that the benefit be withdrawn or the scheme be modified, that supervening public interest would prevail over any promissory estoppel". On facts, it was noted that the respondents could commence commercial production only in February 1991 long after the benefit of the Incentive Scheme had been withdrawn. Their application for eligibility certificate under the said scheme was made only on 2-4-1991 long after the benefit of the scheme had been withdrawn in respect of oil industry. It was held that, in these circumstances, even if it were to be held that the doctrine of promissory estoppel can be invoked, the same cannot be invoked in the case of the respondents.

[i] The decision of the Supreme Court in Motilal Padampat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh, reported in AIR 1979 SC 621 was cited for the proposition that, where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution.

[j] Reliance was placed on the decision of the Supreme Court in M/s Pawan Alloys and Casting Pvt. Ltd. v. U.P. State Electricity Board, reported in AIR 1997 SC 3910 for the proposition that premature withdrawal of the incentive development rebate made available to the industries was not permissible. The Electricity Board had, by issuing notification, held out to

the consumers a representation that, on the total bill of electricity consumed by them during the period of first three years of their taking supply, they will be getting a rebate of 10% and it was assured that such rebate would be available not only to new industrial units which may get established and take electric supply from the Board on and from the date on which the last notification came into force, but rebate would be permissible even to those new industries who had earlier established and taken electricity supply from the Board and whose three years' period earlier granted remained unexpired on 1st September 1986. The Supreme Court held that, on the facts of the case, the impugned withdrawal notification was not shown to be backed up by any demands of public interest which would outweigh the individual interests of the promisees who had acted upon the same.

[k] The decision of the Supreme Court in Kasinka Trading v. Union of India, reported in (1995) 1 SCC 274 was cited for the proposition that the doctrine of promissory estoppel was applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The Supreme Court held that, from the nature of power of exemption granted to the Government under section 25 of the Customs Act, it flows that the same is granted with a view to enabling the Government to regulate, control and promote the industries and industrial productions in the country. Where the Government on the basis of the material available before it, bona fide, is satisfied that the `public interest' would be served by either granting exemption or by withdrawing, modifying or rescinding an exemption already granted, it should be allowed a free hand to do so.

This decision was followed in Shrijee Sales Corporation v. Union of India, reported in (1997) 3 SCC 398, in which, while holding that the principle of promissory estoppel is applicable against the Government, it was also held that the Government is competent to resile from a promise even if there is no manifest public interest involved, provided, of course, no one is put in any adverse situation which cannot be rectified.

6. The learned counsel appearing for the respondents contended that the petitioner was not entitled to invoke the doctrine of promissory estoppel since it had not altered its position on the basis of any promise. It was argued that the petitioner's industry `re-rolling of steel including stainless steel' was included in the list of ineligible industries, both in the resolution dated 12th January 1982, which was applicable in context of the incentives announced under the resolution of 27th August 1980 as well as in the list contained in the Table 1 of the resolution of 18th March 1982, as amended by the resolution of 15-9-1982, by which that Table was expanded by including the said industry in the list of ineligible industries. It was argued that the said industry was made eligible for the first time by the resolution dated 15-1-1987 and it was open for the Government to impose the eligibility condition on the industry that it should have commenced production on or before 15th January 1985. It was submitted that imposition of such cut-off date was not an arbitrary act and was within the province of the powers of the State Government.

6.1 In support of his contention, the learned counsel relied upon the decision of the Alhabad High Court in Creative Handicrafts v. Chairman, Noida, reported in 116 Sales Tax Cases 475, in which, it was held that strict construction must be given to the provisions in an exception / exemption, because, it increases the tax burden on other members of the community, and that, if two views of an exemption are possible, it should be construed in favour of the State and not in favour of the citizen.

7. The petitioner firm has sought a declaration that it is entitled to sales tax benefit incentive of deferment of sales tax dues under the resolution dated 22nd August 1980, at Annexure `A' to the petition. It is also prayed that the resolution dated 15th January 1987, at Annexure `H' to the petition, by which the industry of `re-rolling of steel including stainless steel' was, inter alia, made eligible for sales tax deferment embodied in the government resolution dated 18th March 1982, should be set aside as unconstitutional to the limited extent to which it is made effective from 15-1-1985 by making only the industries commencing production from that date as eligible.

8. The Government, by resolution dated 27th August 1980, had announced the new sales tax incentive scheme with effect from 1st June 1980 for a period of 5 years i.e. upto 31st May 1985. This scheme declared that the

new industrial project including expansion / diversification of existing units `commissioned' (i.e. which have started commercial production on or after 1-6-1980) were eligible to opt for the benefits under this Scheme.

8.1 The list of industries excluded from the purview of this scheme was the same as per the old scheme, which was declared under the resolution of 22-12-1977. It was then made clear in para 3 of the resolution dated 27-8-1980 that, "Government may review this list from time to time ..... In short, these incentives are given under the discretionary power of the State Government and hence, they do not create any claims against the government enforceable in a court of law".

8.2 The industrial unit eligible as per paragraph 2 and 3 of the said resolution, had to opt for one of the two sales tax incentives namely, (1) sales tax exemption incentive, and (2) sales tax deferment incentive. Under the sales tax deferment incentive which the petitioner claims, the scheme envisage that, within the prescribed availability limits "recovery of sales tax payable by the unit on sale of its production will be recovered in six annual installments by Sales Tax Department after 12 years of the respective due dates. No interest will be charged on amounts so deferred". The competent authority, on receiving option was to issue eligibility certificate to enable the unit to obtain either exemption or deferment.

9. The list of industries excluded from the purview of the scheme did not include `re-rolling of steel including stainless steel' when the new scheme was announced under the resolution of 27th August 1980. However, by resolution dated 7/12 th January 1982, the existing list which was contained in paragraph 6 of the resolution dated 22-12-1977 came to be revised. It was provided in the last paragraph of the said resolution dated 12-1-1982 that the Government had reviewed the position and had "prepared a comprehensive list of industries which will not be eligible for any incentives contained in government resolutions / circulars cited at (i), (ii), (iii), (v), (vii), (viii) and (ix) above". These included the government resolutions dated 22-12-1977 at Srl. No. (i) and (ii) and the aforesaid resolution dated 27th August 1980 at Srl. No. (vii). In the comprehensive list of ineligible industries, at Annexure 1 of the resolution dated 12-1-1982, at Srl. No. 24, figured the industry of `re-rolling of steel including stainless steel'. Thus, this industry was not

eligible to any incentives declared under the resolution of 27-8-1980 from 12th January 1982.

9.1 In context of the resolution dated 27-8-1980, the scheme relating to sales tax deferment incentive was ordered under the resolution dated 18th March 1982, the benefit of which is being claimed by the petitioner, Table 1 of that resolution listed industries which were not included in the expression `new industrial unit'. Originally, this list contained 15 industries, but by the resolution of 15th September 1982, it was expanded by adding 31 more industries which included `re-rolling of steel including stainless steel' at Srl. No.10 of the resolution of 15th September 1982, to be read with Table 1 of the resolution of 18th March 1982 in which all these items were added.

9.2 Admittedly, the petitioner firm did not even exist when the resolution dated 18-3-1982 was made or even thereafter when the list of ineligible industries for the purpose of that resolution came to be expanded on 15-9-1982 adding the industry of `re-rolling of steel including stainless steel' in the Table of ineligible industries contained in the resolution of 18th March 1982. The petitioner firm came to be constituted only from 30th March 1984 which fact emerges from the para 5.2 of the petition, in which it is stated; ".... the petitioner firm entered into a partnership agreement and formed a partnership with effect from 30-3-1984. Thereafter, the petitioner firm obtained requisite plot of land ..... and started construction of building on the said plot and at the same time ..... also made an application to the respondent No.4 for getting it registered provisionally .....". In paragraph 5.3 of the petition, it is admitted that the petitioner commenced its commercial production with effect from 21-9-1984.

9.3 It is, thus, abundantly clear that the petitioner firm was constituted and its business activities were commenced much after the industry of `re-rolling of steel including stainless steel' was declared to be ineligible from the date of the resolution dated 7/12 th January 1982, and thereafter, again by the resolution dated 15-9-1982 enlarging the list of ineligible industries in Table 1 of the resolution of 18th March 1982. The petitioner's case that, relying upon the promises held out by the respondent government vide resolution dated 27-8-1980, at Annexure `A', the partners of the petitioner firm undertook venture, is, therefore, wholly incorrect. At all material times when the petitioner

firm was formed and thereafter, when its commercial production started with effect from 21-9-1984, as mentioned in paragraphs 5.4 and 19(b) of the petition, the industry of `re-rolling of steel including stainless steel' was in the list of industries declared as ineligible for the purpose of sales tax exemption and deferment incentives declared under the resolutions of 27th August 1980 and 18th March 1982. The petitioner knowing full well that the said industry was in the list of ineligible industries, started its venture and therefore, there arises no question of enforcing any promise made by the government. The doctrine of promissory estoppel cannot, therefore, come to the rescue of the petitioner.

10. After the policy announcement of exemption and deferment scheme was made under the resolution of 27-8-1980, the sales tax exemption incentives came to be embodied in the two notifications dated 5-2-1981 issued under section 49(2) of the Gujarat Sales Tax Act, 1969 and the Central Sales Tax Act, 1956.

10.1 As regards the scheme relating to sales tax deferment incentive, the Government issued orders under the resolution dated 18th March 1982, at Annexure `C' to the petition, by which, it is provided that, "The new industrial units including expansion / diversification by existing units commissioned (i.e. which have started commercial production of goods) on or after 1st June 1980 shall be eligible for the benefits under this scheme". The availability of such benefit was made subject, inter alia, to the condition that, within 180 days from the date of the resolution or commissioning of the new industry, as the case may be applied, for an eligibility certificate to the Industries Commissioner .....". The eligibility certificate was required to state, inter alia, that new industry had been commissioned on the date specified therein during the period of commencement and ending of the scheme i.e. 1-6-1983 and 31-5-1985. The words `new industrial unit' were defined in the said resolution dated 18-3-1982 and as noted above, the industries named in Table 1 thereof, were not included within the expression `new industrial unit', meaning thereby, this resolution provided its own list of ineligible industries in Table 1, which came to be amended by the resolution dated 15-9-1982, adding 31 more industries including the industry of `re-rolling of steel including stainless steel', which appeared at Srl. No. 10 of the resolution of 15-9-1982, by which the Table 1 of the resolution of 18th March 1982 came to be expanded.

11. The petitioner had applied for the eligibility certificate for getting the benefit of deferment of sales tax, and that the application came to be rejected on 6-2-1985 by the Deputy Industries Commissioner, as per the order at Annexure `B' to the petition, on the ground that the said industry was included in the list of industries which were ineligible for sales tax exemption / deferment scheme and therefore, no eligibility certificate could be issued to the petitioner. This order was never challenged by the petitioner, and rightly so, because, the industry of `re-rolling of steel including stainless steel' was included in the list of ineligible industries under the resolution of 12-1-1982 for the incentives announced under the resolution dated 27-8-1980 and also in the Table of ineligible industries contained in the resolution dated 18-3-1982, as expanded by the resolution dated 15-9-1982.

12. Exemption is provided from payment of whole of the tax payable under the said Act in respect of sales or purchases falling in the categories enumerated under sub-section (1) of section 49, while sub-section (2) empowers the State Government, if it considers it necessary so to do in the public interest, by notification in the official gazette to `exempt any specified class of sales or of specified sales or purchases from payment of the whole or any part of the tax payable under the provisions of this Act'. Such notification is to laid before the State legislature as provided by sub-section (3) of section 49. The exemption order could be issued only under section 49(2) after the policy announcement was made under the resolution dated 27-8-1980. It has been held by the Supreme Court in Sales Tax Officer v. Shree Durga Oil Mills, reported 1998(1) SCC 572, in context of section 6 of the Orissa Sales Tax Act, 1947, that such exemption order could be amended or withdrawn altogether as provided in section 6, and that the Court will not interfere with any action taken by the Government in public interest. Thus, the plea of change of trade policy on the basis of resources crunch was considered to be sufficient for dismissing the respondent's case based on the doctrine of promissory estoppel.

12.1 Incentive scheme of deferment of payment of sales tax dues is different from the incentive of exemption falling under section 49(2) of the Act. In deferment scheme, sales tax becomes due on sales, due to the implementation of the incentive scheme of deferred payment declared by the Government. In fact, the second proviso to section 47(4) of the said Act, inserted with

effect from 24-4-1988, now explicitly recognises the power of the government in relation to incentives by way of deferment.

12.2 The State Government is empowered by general or special order to specify conditions on which the incentive by way of deferment of sales tax or purchase tax or both are to be granted. The State Government can, therefore, specify industries which would not be eligible for the incentive by way of deferment of sales tax or purchase tax or both. The Court will not be justified in interfering with the power of the State Government to decide as to the conditions subject to which it may offer sales tax deferment incentive, to which industries, from which date and from what period. It will be impinging on the statutory power of the State Government to seek justification from it for its policy decision in the matter of grant of incentives by way of exemption under section 49(2) or deferment incentives. The argument raised for the petitioner that the State Government should justify the exclusion of the `re-rolling of steel including stainless steel' industry from the benefit of this incentive by placing it in the list of ineligible industries is, therefore, misconceived and cannot be sustained.

12.3 In the policy that was announced under the resolution dated 27-8-1980, it was made clear that the list of industries excluded from the benefit of incentives offered may be reviewed by the government from time to time, and that these incentives were given under the discretionary powers of the State Government and did not create any enforceable claim against the government. From this, any entrepreneur should have known that such list was liable to be amended at any point of time, if the government decides in exercise its discretionary powers that it was necessary so to do. The inclusion of `re-rolling of steel including stainless steel' in the list of ineligible industries cannot, therefore, be termed as arbitrary. The State Government was under no obligation to grant a concession of this nature and a concession by way of such incentives can be withdrawn at any time by means of a subsequent order. As held by the Supreme Court in Shri Bakul Oil Industries v. State of Gujarat, reported in (1987) 1 SCC 31 in context of section 49(2) of the said Act, a concession by way of tax exemption granted for encouraging entrepreneurs to start industries in rural and undeveloped areas can be withdrawn at any time, and that it was fully within the powers of the Government to withdraw or revoke the exemption by means of a subsequent notification, if such

withdrawal could be done without offending rule of promissory estoppel.

13. In the present case, the petitioner has not made out any case of promissory estoppel even on the averments made in the petition itself. The resolution announcing policy of incentives for new industries was issued on 27-8-1980 and orders regarding deferment of sales tax under the resolution dated 18th March 1982 when the petitioner firm was not even born. When the petitioner firm was constituted on 30th March 1984 and commenced production on 21-9-1984, the industry of `re-rolling of steel including stainless steel' was already in the list of ineligible industries, specifically excluded from the benefits of these incentives. There was, therefore, no question of the industry being established by the petitioner due to any inducement of the government. The petitioner although set up its unit and went into commercial production from 21-9-1984, was not eligible to get the incentive in form of sales tax exemption or deferred payment of sales tax under the policy announced by the resolution dated 27-8-1980 read with the orders made pursuant thereto under the resolution of 18th march 1982. All throughout from 12th January 1982 upto 15th January 1987, when the industry of `re-rolling of steel including stainless steel' was made eligible for sales tax deferment incentive scheme embodied in the resolution dated 18th March 1982 on certain conditions, the said industry remained in the comprehensive list of ineligible industries published under the resolution of 12-1-1982 as well as in the Table of ineligible industries contained in the resolution dated 18th March 1982 as expanded by the resolution dated 15-9-1982. By the resolution dated 15-1-1987, at Annexure `H', the Government made five industries over which the ban was lifted for the purpose of subsidy benefit earlier by resolution dated 15-1-1985, now eligible for the deferred payment of sales tax incentive provided for under the resolution of 18-3-1982. The resolution of 5/15-1-1985 was made in context of the capital investment subsidy scheme which had its own list of ineligible industries attached to the resolution dated 19-8-1983, by which that subsidy scheme was introduced and the item No.21 of the list at Annexure `C' thereto specified `re-rolling of steel and steel scrap including stainless steel', which came to be removed by the resolution of 5/15th January 1985 making that industry eligible for the purpose of capital investment subsidy scheme. That resolution, however, did not affect the list of ineligible industries, which separately existed by virtue of the resolution of 12-1-1982 for the purpose of the exemption and deferment incentive announced by the

resolution of 27-8-1980 as well as the ineligible industries list contained in the Table 1 of the resolution of 18-3-1982, as expanded by the resolution of 15-9-1982. Thus, for the purpose of the resolutions of 27-8-1980 and 18th March 1982, `re-rolling of steel including stainless steel' continued to remain as ineligible, and that industry was not entitled to any of the benefits offered under the said resolutions. The Government, however, removed this industry from the `banned list' and made it eligible in the context of the deferred payment scheme implemented by the resolution of 18-3-1982 by the resolution of 15-1-1987, which lifted the embargo from the five industries on certain conditions, including the condition that the industries should have commenced production on or from 15-1-1985 being the date from which these industries were considered eligible for the subsidy benefit under the resolution of 19-8-1983 by virtue of the revision of the `banned list' attached to that resolution.

14. It is contended for the petitioner that the date 15-8-1985 was arbitrarily fixed as a cut-off line, because, efficient units like the petitioner who had commenced production prior to that date were left out and thereby, arbitrarily discriminated against and that the fixing of the date 15-1-1985 had no nexus with the object of granting incentives which was to achieve rapid industrialization in the rural areas. There is a basic fallacy in this contention. The industry which the petitioner had started was not at all eligible for the incentives from 12-2-1987 to 15-1-1987 and when it was made eligible on 15-1-1987, the condition of commencement of production date, which the State Government was empowered to impose as a part of the scheme, was imposed by providing that the industry should have commenced production from 15-1-1985, being the date from which the embargo on that industry was already lifted in a different context of subsidy scheme of 19-8-1983. Moreover, by its very nature, a condition fixing the date of commercial production, which is a rationale criteria that can be fixed for offering such incentives, will necessarily demarcate the units that have already come into existence and have started production prior to that date, and those which commenced production after the dates so fixed. This situation obtained even under the basic policy announcement resolution of 17-8-1980 under which the eligibility criteria of starting of commercial production for the eligible industries was fixed by providing the cut-off date of 1-6-1980, making the industries, which though not in `banned list', eligible to the benefits only if the new industrial projects had

`started commercial production or or after 1-6-1980'. It was wholly immaterial in context of the ineligible industries as to from which the date they commenced their production, because, the incentives were never offered to the industries listed in the comprehensive list of ineligible industries published by the resolution of 12-1-1982 or to the industries which were included in the Table 1 of the resolution of 18th March 1982, as expanded by the resolution of 15-9-1982 which included the industry of `re-rolling of steel including stainless steel'. The need for new industrial growth in an undeveloped area is to be weighed, by its very nature, in relation to future growth by establishment of new projects over and above the projects which already have come into existence in that area prior to the date from which the incentives are offered. The incentives for establishing new industries in the area cannot be converted into rewards for earlier establishment of some projects in that area. The matter of fixing a cut-off date from which incentives should be offered for new projects to be established is entirely within the domain of the executive which has been statutorily entrusted the task of providing exemption or other incentives under the provisions of the Sales Tax Act. The condition that the five industries made eligible under the resolution of 15-1-1987 should have commenced commercial production from 15-1-1985 to earn the benefit, is in our view a rational criteria for giving incentives and does not create any discrimination amongst the equals. The giving of incentives, whether of exemption or deferred payment, has fiscal implications and necessarily, therefore, the State Government can regulate the incentives in tune with its resources and the need for development in a given area. This would postulate fixing of a date for grant of such incentives and the extent to which they may be offered to the new projects. The requirement of starting commercial production as an eligibility criteria is germane to the object of attracting new industrial projects. Not providing fiscal benefits / assistance to existing projects cannot be a hurdle in the way of offering incentives to the new projects. The classification of the existing and the new projects has a reasonable nexus with the object of offering incentives for the establishment of new projects and thereby, achieving industrial growth. There may also be considerations like amelioration of the regional backward conditions for achieving balanced social development and improved economic standards of the inhabitants of the earmarked area. All these are better left to the State Government for making its policy decisions of fixing the date from which and the conditions on which the

incentives should be offered. The Government has to be left free to determine the priorities in the matter of utilization of its finances and to act in the public interest while issuing, modifying or withdrawing an exemption or other incentives. The challenge against the resolution of 15-1-1987 on the ground that the condition of fixing the cut-off date of 15-1-1985 is arbitrary or unconstitutional, therefore, fails.

15. The contention that the removal of the industry of `re-rolling of steel including stainless steel' from the list of ineligible industries by the resolution of 15-1-1987 should relate back to the resolution of 12-1-1982 or at least from 18-3-1982 when the deferred payment scheme was implemented and ineligibility of the petitioner's unit became relevant and that the industry should be treated as never to have been made ineligible from the very beginning, is canvassed on the footing that this industry was removed from the list Annexure `C' to the resolution of 19-8-1983 pertaining to cash subsidy, by the resolution of 5/15-1-1985, and the new list was attached as Annexure `C' `to the resolution dated 19-8-1983' thereby substituting the original list. In other words, the change made in the list of ineligible industries should be given retrospective effect making it eligible. This is erroneous approach and can be so demonstrated from the fact that it would lead to absurd result when an industry which was eligible is now included in the list and made ineligible, which on the basis of the argument made, will have to return all the benefits, for, now it has become ineligible from the inception of the scheme. In short, there is no warrant for attributing any retrospective effect to any change in the list of ineligible industries and the industries would become ineligible from the date of their entry in such `banned list' signifying that the incentives are not meant for the industries included in that list. If an industry mentioned in the list of ineligible industries is removed, it can only mean that it was to be treated from the date of such removal from the list, as eligible for the benefits. Obviously, therefore, it cannot claim benefits for the period when it remained ineligible.

16. This brings us to the alternative stand taken by the petitioner that the petitioner did not fall in the category of `re-rolling of steel including stainless steel' at item 24 of the comprehensive list of industries excluded from the benefit of the exemption or deferment incentives, under the resolution of 12-1-1982 or the same item appearing in the Table 1 of the resolution of 18-3-1982, as expanded by the resolution of 15-9-1982.

16.1 The nature of the petitioner's industry was described as mild steel re-rolling mill in the application form for provisional registration as small scale industry submitted to the Directorate of Industries, (prior to the formation of the firm) on 14-12-1983, a copy of which was produced on record. Under item of `Brief description of process of manufacture and of raw materials', the raw material was described as `from ship breaking plate, m.s. scrap, belts, ingots, etc. In paragraph 5 and 8 of the petition, it is stated that the petitioner decided to set up a rolling mill industry for the manufacture of m.s. round bars and CTD. bars etc. `from steel scraps' at Vartej. In paragraph 8 of the petition, it is stated that, "The raw material for the petitioner firm is only steel scrap at present and such raw material is being received by the petitioner from the local sources only. Steel scrap is in the form of casted heavy machinery parts, plates, rounds etc.".

17. Ferrous products (i.e. iron and steel) can be recycled by both internal and external methods. Some internal-recycling methods are obvious. Metal cuttings or imperfect products are recycled by remelting, recasting, and redrawing entirely within the steel mill. In the ferrous-metals industry there are also many applications of external recycling. Scrap steel makes up a significant percentage of the feed to electric-arc and basic-oxygen furnaces. The scrap comes from a variety of manufacturing operations that use steel as a basic material and from discarded or obsolete goods made from iron and steel. (See Encyclopaedia Britannica under "Ferous Metals").

17.1 Rolling is the most common metalworking process. More than 90 percent of the aluminium, steel, and copper produced is rolled at least once in the course of production - usually to take the metal from a cast ingot down to a sheet or bar. The most common rolled product is sheet. With high-speed computer control, it is common for several stands of rolls to be combined in series, with thick sheet entering the first stand and thin sheet being coiled from the last stand at linear speeds of more than 100 kilometers (60 miles) per hour. Similar multistand mills are used to form coils of wire rod from bars. Other rolling mills can press large bars from several sides to form I-beams or railroad rails.

Rolling can be done either hot or cold. If the rolling is finished cold, the surface will be smoother

and the product stronger. (See Encyclopaedia Britannica under "Rolling").

17.2 The major iron-bearing raw materials for steelmaking are blast-furnace iron, steel scrap, and direct-reduced iron (DRI). Steel scrap is metallic iron containing residuals, such as copper, tin, and chromium, that vary with its origin. Of the three major steelmaking processes-basic oxygen, open hearth, and electric arc-the first two, with few exceptions, use liquid blast-furnace iron and scrap as raw material and the latter uses a solid charge of scrap and DRI. (See Encyclopaedia Britannica under "Primary Steelmaking - Raw materials").

17.3 There are a number of steel-forming processes including forging, pressing, piercing, drawing, and extruding but by far the most important one is rolling. In this process, the rolls, working always in pairs, are driven in opposite directions with the same peripheral velocity and are held at a specific distance from each other by heavy bearings and mill housings. The steel workpiece is pulled by friction into the roll gap, which is smaller than the cross section of the workpiece, so that both rolls exert a pressure and continuously form the piece until it leaves the roll gap with a smaller section and increased length. (See Encyclopaedia Britannica under "Forming of Steel").

18. A contention is raised that the petitioner is a rolling mill manufacturing articles like m.s. rods, rounds, squares, flats etc. from steel scrap and is not re-rolling mill. In the alternative, it is argued that, assuming that it is a re-rolling mill, even then it is not covered under the aforesaid item 24 inasmuch as the process rolling or re-rolling was done from `steel scrap' and not from `steel or stainless steel'. This stand is sheer exercise in desperation. Prefix `re' is attachable to almost any verb or its derivative and means `once more' or `afresh'. `Re-rolling' would, therefore, mean rolling again. A re-rolling mill would, therefore, be involved in the process of rolling the material which has already been rolled in the past. This explains the use of `steel scrap' by the re-rolling mills. The expression `re-rolling' in the entry 24 of `re-rolling of steel including stainless steel' has to be understood in the context of the nature of process involved and not as a nomenclature of a particular entity. The word

`Re-rolling' in the said entry is by itself capable of conveying that the raw material `steel scrap' is to be used for manufacturing articles like m.s. bars, rounds, squares, flats etc. Therefore, absence of the words `steel scrap' in the said entry of `re-rolling of steel including stainless steel' is of no consequence, when admittedly the petitioner was a re-rolling mill using steel scrap as its raw material. The fact that the entry 21 in the `banned list' of cash subsidy scheme under the resolution of 19-8-1983 referred the industry as `re-rolling of steel and steel scrap including stainless steel' and expressly thereby included `steel scrap', is of no consequence, because, the concept of `re-rolling' itself involves use of `steel scrap' for the manufacturing activity of a rolling mill.

19. For the above reasons, we find no substance in the contention that the petitioner industry would fall outside the ambit of the entry `re-rolling of steel including stainless steel' in the list of industries which are excluded from the benefit of the resolutions dated 27/8/1980 and 18-3-1982. The contentions raised on behalf of the petitioner cannot, therefore, be accepted. The petition, therefore, fails and is rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

20. At this stage, the learned counsel for the petitioner states that the operation of this judgement be stayed for a period of eight weeks so that recovery may not be effected in view of the undertaking of the petitioner recorded in the order dated 29th October 1990, by which interim relief was confirmed subject to the condition that the petitioner shall pay the amount in dispute with interest at the rate of 12% per annum in case the petitioner loses in this petition. There is no justification for staying the operation of this judgement for such purpose. The request cannot, therefore, be acceded to.

MARCH 7, 2002 [R.K.ABICHANDANI, J.]

[K.A.PUJ, J.]
parmar*